

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Roth	Team: Team # 3	CCRB Case #: 200706315	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 10/28/2006 10:50 AM	Location of Incident: Dean Street and Bedford Avenue and the 77th Precinct stationhouse	Precinct: 77	18 Mo. SOL 4/28/2008	EO SOL 4/28/2008	
Date/Time CV Reported Mon, 05/07/2007 11:44 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/07/2007 11:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Peter Oneill	04026	919500	077 PCT
2. POF Charlene Smith	29722	935762	077 PCT
3. Officers			077 PCT
4. POM Edwin Espinal	09609	934831	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Ruth Fadl	21429	899686	077 PCT
2. POM Nicholas Salvitti	27629	926059	077 PCT
3. POM Edwin Jimenez	14178	935070	077 PCT
4. POM Hector Morales	30216	925774	077 PCT
5. POM Zakee Smith	31658	932220	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Charlene Smith	Abuse: PO Charlene Smith facilitated the stop of § 87(2)(b)	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C.POM Edwin Espinal	Force: PO Edwin Espinal struck § 87(2)(b) with an asp.	
D.POM Edwin Espinal	Off. Language: PO Edwin Espinal made remarks to § 87(2)(b) based upon race.	
E. Officers	Force: Officers hit § 87(2)(b) against a vehicle.	
F.SGT Peter Oneill	Abuse: Sgt. Peter Oneill authorized the strip-search of § 87(2)(b)	
G.POM Edwin Espinal	Abuse: PO Edwin Espinal did not obtain medical treatment for § 87(2)(b)	
H. Officers	Abuse: Officers did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Synopsis

On May 7, 2007, § 87(2)(b), § 87(2)(b), filed this complaint by phone with the Civilian Complaint Review Board (CCRB) on behalf of her client, § 87(2)(b). § 87(2)(b) alleged that on October 28, 2006 at approximately 11:00 a.m., officers from the 77th Precinct punched § 87(2)(b) and struck him with an asp on the corner of Dean Street and Bedford Avenue in Brooklyn as they affected his arrest. The investigation determined that Sgt. Peter Oneill, PO Zakee Smith, PO Charlene Smith, PO Ruth Fadl, PO Edwin Espinal, PO Nicholas Savlitti, PO Hector Morales, PO Edwin Jimenez and PO Averill Thompson, all members of the 77th Precinct, were conducting a Street Narcotics Enforcement Unit (SNEU) operation on the above date. PO Charlene Smith, who was assigned to the observation post, observed § 87(2)(b) in a hand to hand drug transaction and conveyed his description over the radio (Allegation A). According to § 87(2)(b) officers ultimately identified from the investigation as PO Fadl and PO Espinal, approached him and instructed him to stop. PO Fadl and PO Espinal grabbed § 87(2)(b) and pulled him to the ground (Allegation B). PO Espinal allegedly struck § 87(2)(b) repeatedly with an asp on his arm and legs (Allegation C) and said, “Get on the mother fucking ground nigger” (Allegation D). When additional officers arrived on the scene, § 87(2)(b) alleged that two unidentified officers slammed him into a vehicle (Allegation E). § 87(2)(b) was transported to the 77th Precinct station house where he alleged that he was strip searched (Allegation F) and numerous officers, including PO Espinal, refused to obtain medical attention for him (Allegations G & H). § 87(2)(b) was transported to § 87(2)(b) from Brooklyn Central Booking and was diagnosed swelling to his arms and legs.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

The statute of limitations in this case expired on April 28, 2008, due in a large part to the fact that the complaint was not filed until six months after the date of the incident. Furthermore, there was a significant delay in receiving documents that were requested from the 77th precinct. This case was initially assigned to Investigator Jennine Giordano. Upon her promotion, this case was reassigned to the undersigned.

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) received medical attention at § 87(2)(b) on October 29, 2006 while he was in NYPD custody. § 87(2)(b) complained that he was hit by a police baton on the previous day. § 87(2)(b) indicated that the location of his pain existed on his left hand, leg and ankle. § 87(2)(b) received additional medical attention at § 87(2)(b) on § 87(2)(b). § 87(2)(b) claimed that he was beaten up by the police two weeks ago and complained of slight swelling to his left jaw (encl. 4-4b).

CCRB Statement

§ 87(2)(b)

§ 87(2)(b) who waited seven months to file this complaint because he was scared, provided an initial phone statement on May 22, 2007, was interviewed at Rainbow Café located on the corner of Rector

Street and Greenwich Street in Manhattan on June 19, 2007 and provided additional phone statements on September 11, 2007 and October 17, 2007 (encl. 4c-4l). § 87(2)(g)

On October 28, 2006 at approximately 11:00 a.m. § 87(2)(b) left a § 87(2)(b) in Brooklyn and walked towards his home located at § 87(2)(b) in Brooklyn. § 87(2)(b) who was dressed in a black leather jacket, black jeans and a gray, burgundy and blue sweater and carrying a burgundy umbrella, never interacted or exchanged any objects with any individuals. When § 87(2)(b) approached the corner of Dean Street and Bedford Avenue he observed a burgundy colored vehicle approach him. § 87(2)(b) continued to walk at a normal pace. PO # 1 who was described as a light-skinned Hispanic male, approximately 5 feet 7 inches tall, 165 pounds with black hair and a light mustache and identified from the investigation as PO Espinal, exited the driver side and PO # 2, a light-skinned heavy Hispanic female with long brown hair and a round face and who was identified from the investigation as PO Fadl exited the passenger side of the vehicle. PO Espinal ran towards § 87(2)(b) and instructed him to stop. PO Espinal said, "We just want to see if you have anything" and instructed § 87(2)(b) to put his hands up. During his initial phone statement § 87(2)(b) also alleged that PO Espinal repeatedly said to him, "Shut the fuck up nigger." PO Espinal searched through § 87(2)(b) pants pockets and jacket pockets, removing his wallet, keys, money and a bottle of methadone that was in his left jacket pocket then placed the objects back into § 87(2)(b) pockets. PO Espinal informed § 87(2)(b) that he found something in the small inner pocket inside the right side of his pant pocket and told § 87(2)(b) he was being placed under arrest. PO Espinal handcuffed § 87(2)(b) and instructed him twice to get on the ground. § 87(2)(b) refused because he was already handcuffed and did not want to get his clothes dirty. PO Espinal and PO Fadl grabbed § 87(2)(b) arms and attempted to pull him to the ground. PO Espinal removed an object from the right side of his waistband that resembled a "super-sized pen with a long spring" and hit § 87(2)(b) on the calves and knees of both legs twenty times. The object, which had the ability to expand, was approximately two feet long when fully expanded. PO Espinal said, "Get on the mother fucking ground nigger." § 87(2)(b) attempted to block PO Espinal from hitting him with the object and when asked how this occurred since he was handcuffed, § 87(2)(b) stated that he has "long arms" and moved them around. § 87(2)(b) fell to the ground face first and PO Espinal hit him three or four additional times with the object on his leg and the left arm. During his initial phone statement § 87(2)(b) alleged that he broke his glasses and a tooth when he fell to the ground. However, he never mentioned this during his subsequent CCRB statement. § 87(2)(b) indicated that he never physically resisted. Four additional male officers, PO # 3, PO # 4, PO # 5 and PO # 6, who were subsequently identified from the descriptions § 87(2)(b) provided and their role during the SNEU operation, as PO Jimenez, PO Morales, PO Salvitti and Sgt. Oneill, respectively, arrived at the scene in a black Crown Victoria and white van. Two unidentified officers picked up § 87(2)(b) from the ground by his handcuffs and since § 87(2)(b) was face down on the ground he could not identify these officers. The officers slammed § 87(2)(b) chest first into the side of the burgundy vehicle. Then PO Espinal punched § 87(2)(b) in his left jaw and said, "Wow, I hit you so hard I think I hurt my hand." § 87(2)(b) was transported to the 77th Precinct. Although § 87(2)(b) reported during his initial phone statement that he was strip-searched outside of the precinct, he testified during his CCRB statement that while standing in front of the precinct, PO Espinal re-searched the small inner pocket inside of § 87(2)(b) right pant pocket. § 87(2)(b) never observed PO Espinal remove anything from this pocket. § 87(2)(b) was taken straight into a holding cell at the rear of the precinct where he was allegedly strip-searched by four officers who from § 87(2)(b) physical descriptions were identified as PO Jimenez, PO Morales, PO Salvitti and Sgt. Oneill. § 87(2)(b) removed all of his clothing. The officers told § 87(2)(b) "that if they found anything on him they were going to tighten him up." § 87(2)(b) was not sure what the officers meant by this comment. § 87(2)(b) asked for medical attention at the precinct at least three or four times from numerous officers, including PO Espinal, officers who transported him to the precinct and from officers who were not at the original scene. However, § 87(2)(b) never got a response. Once § 87(2)(b) was transported to Brooklyn Central Booking on the

following day, he was taken to § 87(2)(b). § 87(2)(b) was diagnosed with swelling to his arms, legs and jaw.

During a subsequent phone statement with § 87(2)(b) on October 17, 2007, § 87(2)(b) was asked if he had any pre-existing injuries to his legs. He reported that he had two pre-existing injuries to his legs. Approximately twenty years ago, § 87(2)(b) was shot in his right leg and underwent orthopedic surgery, at which time screws were placed into his leg. Approximately ten years ago, § 87(2)(b) was shot in his left leg and underwent vascular surgery. § 87(2)(b) confirmed that prior to this incident he did not have any swelling in his legs and it was not until after this incident that the swelling re-appeared.

Photographs of Injuries

During his CCRB statement, § 87(2)(b) provided the undersigned investigator with photographs of the injuries he sustained to his arm, legs and jaw. The photographs were taken by § 87(2)(b) mother at his home on October 29, 2006. The photographs display § 87(2)(b) face, his left wrist and his legs (encl. 4i-4k).

Results of Investigation

Witnesses

During Sgt. Oneill's CCRB statement, he indicated that there were two white males present who identified themselves as Fire Marshall's. However, they were not in uniform or driving a marked vehicle. One of the males handed Sgt. Oneill a Police Department radio and said, "Your guy dropped this." The two males left the scene before Sgt. Oneill was able to obtain names or contact information for them. Without obtaining further information, the CCRB was not able to identify these individuals.

Identification of Officers Interviewed

PO Charlene Smith is listed as § 87(2)(b) arresting officer. Furthermore, the 77th Precinct tour 2 roll call for October 28, 2006 confirms that the above officers were assigned to the SNEU team.

Officer Statements

PO Charlene Smith

PO Charlene Smith prepared the complaint report and arrest report. The narrative in the complaint and arrest report indicates that PO Charlene Smith observed § 87(2)(b) in a hand to hand drug transaction exchanging U.S. currency for an object with an un-apprehended dealer. The arrest report notes that no physical force was used in order to affect § 87(2)(b) arrest (encl. 5-5d).

CCRB Statement

PO Charlene Smith, who has 3 years tenure with the NYPD, is a § 87(2)(b)-old black female who is 5 feet 8 inches tall, 220 pounds with brown hair and brown eyes. PO Charlene Smith was interviewed at the CCRB on November 20, 2007 (encl. 5i-5k). On October 28, 2006 PO Charlene Smith worked from 7:05 a.m. until 3:40 p.m. and was assigned to the observation post during a SNEU operation with PO Zakee Smith. Both were dressed in plainclothes and assigned to an unmarked vehicle. PO Charlene Smith had the following memo book entry regarding the incident. *At 10:15 a.m. conducting a SNEU operation at Franklin Avenue and Dean Street. At 10:50 a.m., § 87(2)(b) charged with 220.03 on the corner of Bedford Avenue and Dean Street. Defendant wore black hat, black jeans, black boots, blue coat, 6'2" 215 pounds. He was carrying burgundy umbrella in right hand. Male Black walked with a limp. At 10:51 it was confirmed that defendant possessed one Ziploc containing cocaine. At 11:15 a.m., positive set with one arrest (encl. 5f-5h).*

On October 28, 2006 at approximately 11:00 a.m., PO Charlene Smith who observed a male, subsequently identified from his arrest as § 87(2)(b) approach an unidentified male on the southeast corner of Franklin Avenue and Dean Street and engaged in a brief conversation. PO Charlene Smith, who was

positioned in the driver seat of her vehicle on the northeast corner, which was approximately fifteen to twenty feet away from § 87(2)(b) when she observed § 87(2)(b) hand the unidentified dealer a sum of U.S. currency in exchange for a small object. At that point, PO C. Smith could not see what was inside of the object and could only describe it as a “very small object.” Even though PO C. Smith could not describe the object, from her experience working in the SNEU unit and from the way that the two individuals exchanged the object, PO C. Smith believed the two individuals participated in a drug sale. § 87(2)(b) walked away from the unidentified individual and headed eastbound on Dean Street towards Bedford Avenue while holding the object in one of his hands. PO Charlene Smith never observed § 87(2)(b) place the object into any of his pockets. PO Charlene Smith alerted PO Zakee Smith. However, she is not sure whether PO Zakee Smith observed the exchange. PO Charlene Smith immediately conveyed § 87(2)(b) direction of flight as well as his physical description over the SNEU teams’ point to point radio and specified everything that is contained in her memo book entry. PO Charlene Smith indicated that the unidentified male dealer remained on the corner of Franklin Avenue and Dean Street but was not apprehended because he left the scene while § 87(2)(b) was being apprehended. A short time later, PO Charlene Smith overheard PO Fadl call for assistance on the radio. PO Charlene Smith confirmed that she never responded or was present when § 87(2)(b) was apprehended. An unidentified member of the SNEU team informed PO Charlene Smith over the radio that cocaine was recovered from § 87(2)(b) and she noted it in her memo book. At the precinct, PO Charlene Smith positively identified § 87(2)(b). PO Charlene Smith confirmed that since § 87(2)(b) was walking with a limp she noted that he had an old leg injury on the command log. PO Charlene Smith was not aware of § 87(2)(b) being struck with an asp, being strip-searched or sustaining injuries during the incident. She did not interact directly with § 87(2)(b) at the precinct.

PO Zakee Smith

PO Zakee Smith, who has 4-years tenure with the NYPD, is a § 87(2)(b)-old black male who is 5 feet 9 inches tall, 155 pounds with black hair and brown eyes. PO Zakee Smith, who has since been transferred to the Fleet Services Division, was interviewed at the CCRB on February 20, 2008 (encl. 6d-6f). On October 28, 2006 PO Zakee Smith worked the same tour and assignment as PO Charlene Smith. Although PO Zakee Smith had memo book entries noting his SNEU assignment for the above date, he did not have any entries pertaining to this incident (encl. 6b-6c).

On October 28, 2006 at approximately 11:00 a.m., while conducting observations from his vehicle on the corner of Dean Street and Franklin Avenue in Brooklyn, PO Zakee Smith overheard PO Charlene Smith provide a physical description of a male, who was subsequently identified from his arrest as § 87(2)(b) over the point to point radio. PO Zakee Smith never observed the hand to hand exchange but overheard PO Fadl call for help over the point to point radio. PO Zakee Smith clarified that while PO Charlene Smith made the observation of § 87(2)(b) he was watching the surrounding area to make sure there were no immediate threats and to ensure that no one was watching them or suspected that they were police officers. After the incident, PO Zakee Smith learned that § 87(2)(b) physically resisted his arrest and fought with PO Espinal and PO Fadl but did not find out any further details. PO Zakee Smith did not interact with § 87(2)(b) at the precinct because of his role as the observation post.

PO Ruth Fadl

PO Fadl furnished the information that is contained in the criminal court complaint. According to PO Fadl she observed § 87(2)(b) in possession of a quantity of crack cocaine. § 87(2)(b) threw the crack cocaine, which was ultimately recovered by PO Fadl, to the ground. PO Fadl also testified that § 87(2)(b) resisted arrest by flailing his arms and holding his arms against his body as he refused to be handcuffed (encl. 7).

CCRB Statement

PO Fadl, who has 16-years tenure with the NYPD, is a § 87(2)(b)-old Hispanic female who is 5 feet 9 inches tall, 170 pounds with brown hair and brown eyes. PO Fadl was interviewed at the CCRB on November 27, 2007 (encl. 7d-7f). On October 28, 2006 PO Fadl worked from 7:05 a.m. until 3:40 p.m. with PO Espinal.

Both were assigned to the apprehension car during the SNEU operation. They were dressed in plainclothes and assigned to an unmarked vehicle, of which she could not recall the make, model or color. PO Fadl did not have any entries in her memo book regarding this incident (encl. 7b-7c).

On October 28, 2006 shortly after 11:00 a.m., PO Fadl and PO Espinal received a radio transmission from PO Charlene Smith, which was consistent with what PO Charlene Smith had reported during her CCRB statement. A minute or two after receiving the radio transmission, she observed a male, subsequently identified as § 87(2)(b) who matched the physical description provided by PO Charlene Smith walking on the north side of Dean Street approaching Bedford Avenue. PO Fadl and PO Espinal, who were originally on the southeast corner of Bedford Avenue and Dean Street, drove their vehicle to the north side of the street and both officers, who had their NYPD shields exposed, exited their vehicle. PO Fadl and PO Espinal approached § 87(2)(b) as he walked by their vehicle. When PO Fadl asked § 87(2)(b) where he was coming from he responded that he has just exited a store on Dean Street and Franklin Street. PO Fadl explained to § 87(2)(b) that he was observed purchasing narcotics. As soon as she said that, § 87(2)(b) reached his hand towards his waistband area and attempted to place his hand into his right pocket. PO Fadl grabbed § 87(2)(b) right arm, before he was able to reach into his pocket, and said, "Don't go in your pocket." § 87(2)(b) pushed PO Fadl, with his left arm in her chest, causing her to take a step back. PO Fadl, who was still holding onto § 87(2)(b) right arm, and PO Espinal pushed § 87(2)(b) two or three inches against a chained-linked fence so that he could not flee the scene and PO Espinal grabbed his left arm. PO Fadl called for assistance on her radio using her other hand. Somehow, § 87(2)(b) hand got loose and he knocked PO Fadl's radio to the ground. § 87(2)(b) started swinging his arms and kicking his legs. PO Fadl wrapped her arms around § 87(2)(b) waist in an effort to hold his arms down. However, since § 87(2)(b) was such a big man she could only keep one of his arms held down. Using his other arm, § 87(2)(b) hit PO Fadl over her head with a closed fist and attempted to kick PO Espinal. § 87(2)(b) continually tried to place his hand into his right pocket. PO Espinal removed his asp and hit § 87(2)(b) on his legs so that he would cease kicking. Because of the way that she was positioned, she could not see exactly what part of § 87(2)(b) leg PO Espinal struck with the asp and could not estimate how many times PO Espinal hit § 87(2)(b). § 87(2)(b) broke loose of PO Fadl's grip and attempted to flee the scene. PO Fadl and PO Espinal chased § 87(2)(b) for a short distance. When PO Fadl grabbed § 87(2)(b) he pushed his whole body into PO Fadl's body causing her back to hit the unmarked vehicle. PO Fadl, PO Espinal and § 87(2)(b) fell to the ground face first during the struggle. § 87(2)(b) placed his arms underneath his stomach to prevent the officers from handcuffing him. Sgt. O'Neill and his operator, an unidentified male officer, arrived at the scene as § 87(2)(b) was on the ground. Sgt. O'Neill and his partner assisted in handcuffing § 87(2)(b). PO Fadl did not believe any other officers arrived at the scene. Contrary to what PO Fadl reported in the criminal court complaint, after § 87(2)(b) was handcuffed, she observed PO Espinal search § 87(2)(b) and recover, from the small pocket inside of his right pant pocket, one "small plastic twist" of crack cocaine, which she estimated to be a \$5.00 bag. PO Espinal gave the narcotics to PO Fadl. PO Fadl was not aware of § 87(2)(b) being strip-searched. PO Fadl never overheard PO Espinal refer to § 87(2)(b) as a nigger or punch him and never observed any officers slam § 87(2)(b) into a vehicle. PO Fadl sustained a scrape on her knee but did not report it. PO Fadl did not recall who transported § 87(2)(b) to the precinct. PO Fadl did not observe any injuries on § 87(2)(b) and he never complained of any injuries or requested medical attention.. Although PO Fadl confirmed that § 87(2)(b) was walking with a limp, he never informed PO Fadl that he had a pre-existing injury to his leg.

PO Edwin Espinal

PO Espinal, who has 3-years tenure with the NYPD, is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. PO Espinal was interviewed at the CCRB on January 29, 2008 (encl. 8c-8d). During his CCRB statement, PO Espinal indicated that his notification specified that the incident happened on October 28, 2007 as a result he could not recall the tour he worked on October 28, 2006. On April 3, 2008, PO Espinal faxed a copy of his memo book to the CCRB, which confirmed that he worked the same tour and assignment as PO Fadl. PO Espinal did not have any entries in his memo book regarding this incident (encl. 8a-8b).

PO Espinal indicated that he has completed dozens of arrests since this incident and often encounters perpetrators who resist their arrest. Therefore, he could not recall this specific incident. Even though PO Espinal confirmed that he normally carries an asp while on duty, he could not recall whether it was necessary to strike § 87(2)(b) with an asp on the above date. Additionally, PO Espinal could not recall whether he used discourteous language or punched § 87(2)(b) and whether § 87(2)(b) was strip-searched.

Sgt. Peter Oneill

Sgt. Oneill, who has 10-years tenure with the NYPD, is a § 87(2)(b)-old male who is 6 feet tall, 178 pounds with brown hair and hazel eyes. Sgt. Oneill, who has since been promoted to a lieutenant and transferred to the 60th Precinct, was interviewed at the CCRB on November 30, 2007 (encl. 9c-9e). On October 28, 2006 Sgt. Oneill worked the same tour as the above officers, was the SNEU supervisor and was partnered with PO Salvitti in an unmarked apprehension vehicle. Sgt. Oneill was dressed in plainclothes. Sgt. Oneill had the following memo book entries regarding the incident: *At 10:15 a.m., set up at the corner of Franklin Street and Dean Street. At 11:15 a.m., an arrest was made and defendant resisted (encl. 9a-9b).*

October 28, 2006 shortly after 11:00 a.m., Sgt. Oneill and PO Salvitti responded to Franklin Street and Dean Street in response to PO Fadl's call for help. When Sgt. Oneill arrived, he observed PO Espinal and PO Fadl on the ground attempting pull a male's hands together to handcuff him. The male who was subsequently identified as § 87(2)(b) and who was screaming and cursing repeatedly pushed PO Espinal and PO Fadl away from him. PO Salvitti approached PO Fadl and PO Espinal to assist and all three eventually handcuffed § 87(2)(b). Sgt. Oneill, who never physically assisted, never observed any of the officers punch or kick § 87(2)(b). After § 87(2)(b) was handcuffed, PO Espinal searched § 87(2)(b) pockets, removed a bag of crack and handed it to PO Fadl. PO Espinal's handcuffs and asp were on the ground. Sgt. Oneill picked up PO Espinal's handcuffs and asp, which were on the floor near him, and then handed them over to PO Espinal. Sgt. Oneill never observed PO Espinal strike § 87(2)(b) with his asp and PO Espinal never informed Sgt. Oneill that it was necessary to strike § 87(2)(b) during the incident. A white marked van arrived at the scene. However, Sgt. Oneill could not recall which members of his SNEU team were inside of the van. Sgt. Oneill never observed any officers slam § 87(2)(b) into a vehicle. Sgt. Oneill could not recall who transported § 87(2)(b) to the precinct. When Sgt. Oneill arrived at the precinct, § 87(2)(b) was standing at the front desk. One of the unidentified officers, who had transported § 87(2)(b) to the precinct, informed Sgt. Oneill that § 87(2)(b) was squirming and fidgeting during the transport and believed § 87(2)(b) was trying to hide something. After hearing this information, Sgt. Oneill authorized the strip search of § 87(2)(b). Sgt. Oneill did not know which officers' or how many ultimately strip-searched § 87(2)(b) but confirmed they would have been members of the SNEU team. Sgt. Oneill remained by the front desk when the strip-search was conducted. Afterwards, Sgt. Oneill was informed that the strip-search produced negative results. Sgt. Oneill confirmed that he made § 87(2)(b) arrest entry into the command log and acknowledged the fact that it is required to document a strip-search in the command log and that he failed to do. As is noted on the command log, Sgt. Oneill confirmed that § 87(2)(b) had an old leg injury to one of his legs. Sgt. Oneill instructed PO Charlene Smith to make a note of this injury. § 87(2)(b) never complained of any injuries or requested medical attention and Sgt. Oneill did not observe any injuries on § 87(2)(b).

PO Nicholas Salvitti

PO Salvitti, who has 8-years tenure with the NYPD, is a § 87(2)(b)-old white male who is 6 feet 1 inch tall, 212 pounds with blonde hair and blue eyes. He was interviewed at the CCRB on March 28, 2008 (encl. 10c-10e). On October 28, 2006 PO Salvitti worked the same tour and assignment as Sgt. Oneill. PO Salvitti did not have any entries regarding this incident (encl. 10a-10b). § 87(2)(g)

Upon arriving at Dean Street and Bedford Avenue, PO Salvitti approached PO Espinal and PO Fadl who were on the ground attempting to handcuff § 87(2)(b). § 87(2)(b) already had one handcuff on and

was flailing his arms and twisting his body. PO Salvitti grabbed § 87(2)(b) arm that was not handcuffed and brought it close to the other arm. Similar to Sgt. Oneill, PO Salvitti never observed PO Espinal strike § 87(2)(b) with an asp, however, PO Salvitti never observed PO Espinal holding an asp and never noticed an asp on the ground in the vicinity of where § 87(2)(b) was apprehended. PO Salvitti drove his vehicle back to the area he was in prior to § 87(2)(b) apprehension and continued the SNEU operation. He did not go back to the precinct until his end of tour. Therefore, PO Salvitti was not aware of § 87(2)(b) being strip-searched at the precinct and was never involved in strip-searching § 87(2)(b). PO Salvitti was not sure if any narcotics were recovered from § 87(2)(b) at the scene. PO Salvitti could not recall which officers were assigned to the prisoner van. Additionally, he could not recall which officers transported § 87(2)(b) to the precinct.

PO Edwin Jimenez and PO Hector Morales

PO Jimenez, who has 3-years tenure with the NYPD, is a § 87(2)(b)-old Hispanic male who is 5 feet 11 inches tall, 190 pounds with brown hair and brown eyes. PO Morales, who has 8-years tenure with the NYPD, is a § 87(2)(b)-old Hispanic male who is 5 feet 8 inches tall, 180 pounds with brown hair and brown eyes. Both were interviewed at the CCRB on January 25, 2008 and February 6, 2008, respectively (encl. 11g-11h & 11k-11l). Similar to PO Espinal, PO Jimenez and PO Morales were notified for the wrong incident date and did not have the correct memo book entries with them. PO Jimenez faxed a copy of his memo book to the undersigned investigator, which confirmed that he worked the same tour and assignment as the above officers (encl. 11a-11b). However, he did not have any entries regarding this incident. PO Morales, however, never provided the CCRB with a copy of his memo book.

PO Jimenez and PO Morales had no recollection of the incident. Although PO Jimenez noted that he was most likely assigned to the prisoner van, he could not recall which officers, if any, may have been assigned to the van with him. Both officers did not recall strip-searching § 87(2)(b) on the above date.

Officers Not Interviewed

Since PO Averill Thompson resigned from the NYPD on November 1, 2007 he was not interviewed.

Medical Documents

X-ray results from § 87(2)(b) revealed that there was soft tissue swelling overlying the ankle with a peculiar bony growth like lesion of the behind and inner side of the shin bone, where the shaft and head of the long bone meet. This may represent a condition resulting from a prior injury or prior trauma. There was no acute fracture. There was also soft tissue swelling over the dorsum of the hand but no acute fracture. § 87(2)(b) informed the doctor of his prior medical history at § 87(2)(b) and confirmed that he had a left leg graft pursuant to a gun shot wound. This hospital diagnosed him with a clotted blood injury to his left leg, contusion injury to his left cheek and a loose premolar tooth (encl. 12-12f).

Police Department Documents

Command Log, Arrest Photograph, Property Vouchers, Prisoner Holding Pen Roster, Roll Call (encl. 13-13g)

According to the command log, § 87(2)(b) arrived at the precinct at 11:20 a.m. He appeared normal and it is noted that he had an old leg injury. The command log does not contain a note that § 87(2)(b) was strip-searched. § 87(2)(b) arrest photograph only provides a visual of his face and neck and since § 87(2)(b) is claiming injury to his arms and legs the arrest photograph is not useful in determining the extent, if any, of these injuries. According to the property vouchers, a clear plastic bag containing crack cocaine was recovered from § 87(2)(b). Contrary to what PO Fadl and Sgt. Oneill reported during their CCRB statements, the voucher notes that the narcotic was recovered from the ground where § 87(2)(b) threw it. The roll call confirms that all of the officers who were interviewed were on duty when the incident occurred.

Police Officer CCRB History

PO Charlene Smith, PO Espinal and Sgt. Smith do not have any prior substantiated allegations (encl. 2-2b).

Complainant CCRB History

§ 87(2)(b)

Disposition of Criminal Case and Civilian Criminal Conviction History

Pursuant to this arrest, on August 14, 2007, § 87(2)(b) pleaded guilty to criminal possession of a controlled substance and was sentenced to ninety days in prison. § 87(2)(b)

Notice of Claim

There was no notice of claim filed for this incident (enc. 15).

Conclusions and Recommendations

Identification of Subject Officers

PO Charlene Smith acknowledged her role as the observation post during the operation and it was determined that the stop of § 87(2)(b) was predicated on the information PO Charlene Smith provided to the field team § 87(2)(g) PO Espinal and PO Fadl jointly apprehended § 87(2)(b) § 87(2)(g)

§ 87(2)(b) § 87(2)(b) alleged that he requested medical attention from PO Espinal, who ignored his request. § 87(2)(g)

Undisputed Facts

It is undisputed that PO Charlene Smith observed § 87(2)(b) engage in a drug sale, radioed this information to this SNEU team as well as § 87(2)(b) physical description and direction of flight. It is undisputed that PO Espinal and PO Fadl approached § 87(2)(b) as a result of the above radio transmission. It is undisputed that PO Fadl called for help over the radio after she apprehended § 87(2)(b). It is undisputed that physical force was used against § 87(2)(b) in order to apprehend him. It is undisputed that § 87(2)(b) was searched and that crack/cocaine was recovered from him. It is undisputed that § 87(2)(b) was subsequently transported to § 87(2)(b) from Brooklyn Central Booking where he complained of pain to his arms and legs. It is undisputed that § 87(2)(b) had pre-existing injuries to his legs.

Disputed Facts

It is disputed whether PO Espinal struck § 87(2)(b) with an asp. More specifically the amount of times and the exact location in which PO Espinal allegedly hit § 87(2)(b) with the asp remains disputed. It is disputed whether PO Espinal said, "Get on the mother fucking ground nigger." It is disputed whether § 87(2)(b) physically resisted. It is disputed whether PO Espinal punched § 87(2)(b) in his face or whether officers slammed him against a vehicle. It is disputed whether § 87(2)(b) was strip-searched at the precinct. It is disputed whether § 87(2)(b) requested medical attention at the precinct. It is disputed from the photographs § 87(2)(b) provided whether the injuries were pre-existing or a direct result of this

incident. It is disputed whether the crack/cocaine was recovered from the ground or from § 87(2)(b) pocket.

Assessment of Evidence

§ 87(2)(b) alleged that he was approached by PO Espinal and PO Fadl as he approached the corner of Dean Street and Bedford Avenue in Brooklyn and instructed to stop. Although § 87(2)(b) indicated that he never interacted or exchanged any objects with any other individuals, PO Charlene Smith testified that she observed § 87(2)(b) in a hand to hand transaction with an un-apprehended seller, in which a sum of U.S. currency was exchanged for a small object. Although she could not determine what the object was that was exchanged, she explained that from her experience working in the SNEU unit and from the characteristics of the exchange, she believed it to be a drug sale. § 87(2)(g)

§ 87(2)(b) alleged that PO Espinal and PO Fadl grabbed him and pulled him to the ground. He also alleged that PO Espinal punched him in his left jaw. § 87(2)(g)

§ 87(2)(b) indicated during his CCRB statement that he refused to get on the ground and moved his arms around even as they were handcuffed. Even though the arrest report does not note that physical force was used against § 87(2)(b) to affect his arrest, PO Fadl testified to the contrary. PO Fadl indicated that § 87(2)(b) pushed her in her chest, swung his arms and legs and pushed her into a vehicle. PO Espinal, on the other hand, could not recall the incident. § 87(2)(b) and PO Fadl both confirm that some amount of physical force was used during the arrest. PO Salvitti and Sgt. Oneill, who arrived midway during the struggle between § 87(2)(b) PO Espinal and PO Fadl, both confirmed that § 87(2)(b) was physically resisting. Additionally, all of the officers corroborated that PO Fadl called for help over her radio. PO Fadl, Sgt. Oneill and PO Salvitti never observed PO Espinal punch § 87(2)(b) in his face. § 87(2)(g)

§ 87(2)(b) alleged that PO Espinal struck him with an expandable object at least twenty times on his legs and arm. While PO Espinal was allegedly hitting § 87(2)(b) with the object that the investigation determined to be an asp, he allegedly said to § 87(2)(b) “Get on the mother fucking ground nigger.” Although PO Fadl testified that PO Espinal struck § 87(2)(b) with his asp in his legs so that he would cease kicking, she could not recall how many times he was struck. PO Espinal had no recollection of the incident. Sgt. Oneill testified that when he arrived at the scene PO Espinal’s asp and radio were on the ground near him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that two unidentified officers slammed his chest into a vehicle before he was transported to the precinct. § 87(2)(b) could not provide descriptions for these officers because he claimed that he was face down on the ground. However, once the officers picked up § 87(2)(b) he was no longer facing the ground and it is more than likely he would have seen which officers had allegedly slammed him into the vehicle. § 87(2)(g)

§ 87(2)(b) alleged that he was strip-searched inside of the 77th Precinct station house. All of the officers interviewed, except Sgt. Oneill, denied strip-searching or having knowledge of § 87(2)(b) being strip-searched. Sgt. Oneill testified that he authorized the strip-search of § 87(2)(b) however could not recall which officers conducted the strip search. Sgt. Oneill noted the reason why he authorized the strip search was a result of information he obtained from an unidentified officer in regards to § 87(2)(b) fidgeting and squirming in the prisoner van. It was further known to him at the time that § 87(2)(b) was arrested for a drug related offense. *Patrol Guide Procedure 208-05* (encl. 1e-1f) notes that a strip search will be utilized when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. Other factors that should be considered in determining the necessity for a strip search include the nature of the crime...” § 87(2)(g)

§ 87(2)(b) alleged that he asked numerous officers for medical attention at the 77th Precinct, including PO Espinal. While all of the above officers denied hearing § 87(2)(b) make this request, he was ultimately removed to § 87(2)(b) from Brooklyn Central Booking where he was diagnosed with swelling on the ankle, which appeared to be the result of a prior injury. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(b) alleged that during the strip search officers said to him, “If we find anything on you we are going to tighten you up.” However, § 87(2)(b) could not articulate exactly what he believed

the officers meant by this comment and it is not completely evident that this comment translates into a threat of force allegation § 87(2)(g). Although § 87(2)(b) alleged that PO Espinal spoke discourteously towards him at the same time he called him a “nigger.” § 87(2)(g)

Allegation A: Abuse of Authority: PO Charlene Smith facilitated the stop of § 87(2)(b)

Allegation B: Force: Officers used physical force against § 87(2)(b)

According to *Kamins Search and Seizure* Guidelines, “An officer may forcibly detain an individual to question him/her as long as they have a reasonable suspicion that criminal activity is afoot. The United States Supreme Court has held that a police officer must have a particularized and objective basis for suspecting a particularized person of a criminal activity” (encl. 1-1a). § 87(2)(g)

Allegation C: Force: PO Edwin Espinal struck § 87(2)(b) **with an asp.**

Allegation D: Offensive Language: PO Edwin Espinal made remarks to § 87(2)(b) **based upon race.**

Allegation G: Abuse of Authority: PO Edwin Espinal did not obtain medical treatment for § 87(2)(b)

Allegation H: Abuse of Authority: Officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(g)

Allegation E: Force: Officers hit § 87(2)(b) **against a vehicle.**

§ 87(2)(g)

Allegation F: Abuse of Authority: Sgt. Peter Oneill authorized the strip-search of § 87(2)(b)

Sgt. Oneill authorized the strip-search of § 87(2)(b) after he was lawfully arrested for a drug related offense. Furthermore, he obtained information that § 87(2)(b) was acting suspiciously in the van by fidgeting and squirming. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: